

The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN PAUL JONES

Appeal No. 2006-1574
Application No. 09/903,177
Technology Center 3600

ON BRIEF

Decided: September 13, 2006

Before LEVY, NAPPI, and FETTING, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 1 through 36, which are all of the claims pending in this application.

We AFFIRM.

BACKGROUND

The appellant's invention relates to a method for selling fuel to a vehicle. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method for selling fuel to a vehicle, wherein the method comprises the steps of:

storing vehicle specific data in the vehicle;
transmitting said data from the vehicle to a fuel pump computer; and
determining, at least partially, by said fuel pump computer, a per unit price of the fuel sold to said vehicle, using said data.

PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Walkey 4,469,149 September 4, 1984

Marion US2002/0046117 A1 April 18, 2002 (February 17, 1998)

Pollock 5,923,572 July 13, 1999

Minnesota Representative Proposes Mileage Tax to Replace Gas Tax, Tax News Update, Vol. 13, No. 1, January 4, 2000 (Minnesota)¹

Plotkin, *Technologies and Policies for Controlling Greenhouse Gas Emissions from the U.S. Automobile and Light Truck Fleet*, Center for Transportation Research, Argonne National Laboratory, January 2000 (Plotkin)

Department for Transport, *Driving the Agenda: The First Report of the Cleaner Vehicles Task Force*, December 1, 2000 (Task Force)²

Transportation Issues, The 2001 Environmental Handbook for the Oregon Legislature, Chapter 12, Oregon Conservation Network, January 29, 2001 (Transportation Issues)³

¹ Found at <http://www.sustainableeconomy.org/tnu/vol.13/13.1.html>

² Found at http://www.dft.gov.uk/stellent/groups/dft_roads/documents/page/dft_roads_506886-02.hcsp

³ Found at <http://www.olcv.org/handbook/shap12.html>

REJECTIONS

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the examiner's answer (mailed December 20, 2005) for the reasoning in support of the rejection, and to appellant's brief (filed July 21, 2005) and reply brief (filed February 21, 2006) for the arguments thereagainst.

The examiner withdrew the rejection under 35 U.S.C. § 101. [See Answer at p. 5]

Claims 1, 22 and 36 stand rejected under 35 U.S.C. § 102(b) as anticipated by Minnesota.

Claims 22 and 28 through 33 stand rejected under 35 U.S.C. § 102(b) as anticipated by Walkey.

Claims 22 and 33 through 35 stand rejected under 35 U.S.C. § 102(e) as anticipated by Marion.

Claim 23 stands rejected under 35 U.S.C. § 103 as obvious over Minnesota.⁴

Claim 3 stands rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Transportation Issues. [See footnote 4 below]

Claims 4 through 7 stand rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Task Force. [See footnote 4 below]

Claims 8 through 10 and 19 through 21 stand rejected under 35 U.S.C. § 103 as obvious over Minnesota. [See footnote 4 below]

Claims 11, 12, 14 and 18 stand rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Marion. [See footnote 4 below]

Claim 2 stands rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Plotkin. [See footnote 4 below]

⁴ This rejection is made in the Final Rejection mailed January 13, 2005. This rejection is not presented in any of the appeal brief, examiner answer, or reply brief. The examiner characterizes this omission as evidence that the rejection was not appealed. A more correct characterization is that this rejection stands or falls with the above rejection over novelty with respect to the independent claim(s). [See Brief at p. 3].

Claims 24-27 stand rejected under 35 U.S.C. § 103 as obvious over Walkey in view of Pollock. [See footnote 4 above]

Claims 17 stands rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Walkey. [See footnote 4 above]

Claim 15 stands rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Walkey and further in view of Pollock. [See footnote 4 above]

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1, 22 and 36 rejected under 35 U.S.C. § 102(b) as anticipated by Minnesota.

We note that the appellant argues these claims as a group. Accordingly, we select claim 1 as representative of the group. Minnesota describes the use of vehicle distance traveled to add a mileage tax to a gas pump total.

The appellant argues that the claim limitation "vehicle specific data" means data that identifies what particular category the particular vehicle is in. The appellant argues that this definition precludes a measurement of distance traveled from being an embodiment. [See Brief at p. 14-16].

The examiner argues that the specification provides many examples of vehicle specific data implying wide latitude in the interpretation. The examiner goes on to argue that the limitation is not so narrow as to be confined to that based on the type of vehicle. [See Answer at p. 5-9]. The appellant responds with an extensive analysis of the dictionary definition of the word "specific." [See Reply Brief at p. 2-8].

We find the appellant's arguments to be unpersuasive. As the examiner argues, the claim limitation is to "vehicle specific" not "vehicle category specific" data. This phrase is more broad than as the appellant argues, and may reasonably encompass distance traveled by a specific vehicle, i.e. the distance traveled by a specific vehicle is vehicle specific data. This is a mere tautology.

We note that in the appellant's extensive analysis of the definition of "specific" in the reply brief, the many arguments purporting to show that "specific" means specific category, would be equally persuasive when applied to arguing that "specific" means specific instance. For example, the appellant argues that one definition of "specific" from the dictionary is "intended for, or acting on a particular thing." [See Reply Brief at p. 3] A particular instance is a particular thing, and so according to this definition, vehicle specific data may encompass data that is intended for, or acting on a particular vehicle. We note that distance traveled that is recorded within a vehicle is an element of data intended for that particular, i.e. specific, vehicle.

We make no determination as to whether distance traveled would be an embodiment of vehicle category specific data, were the appellant to so amend the claim.

Accordingly we sustain the examiner's rejection of claims 1, 22 and 36 rejected under 35 U.S.C. § 102(b) as anticipated by Minnesota.

Claims 22 and 28 through 33 rejected under 35 U.S.C. § 102(b) as anticipated by Walkey.

We note that the appellant argues these claims as a group. Accordingly, we select claim 22 as representative of the group. Marion describes the use of a vehicle transponder to transmit data regarding fuel and other purchases and to qualify a purchase for discount. Walkey describes using an active or passive data provider inside the gas tank entry tube to transmit its contents to a reader on the gas nozzle.

The appellant argues that the claim limitation "determining, at least partially, by said fuel pump computer, a per unit price of the fuel sold to said vehicle, using said data" is not met by a customer making allowable fuel grade selections.[See Brief at p. 18]. The appellant again argues that Walkey does not refer to a specific vehicle category.

The examiner argues that Walkey actually provides a type of gas based on the data from the vehicle, rather than having the customer select the gas. We note that Walkey does not go this far. The portion that the examiner points to [See Answer at p. 9 and Walkey col. 5 lines 21-23] does indeed interrogate the vehicle through a data link for fuel type, but says nothing regarding the use of that data for automatically selecting fuel type. However, we note that the claim limitation is sufficiently broad that the claim limitation is met so long as the data is in some manner considered in determining the unit price. We note that Walkey does prevent certain grades of fuel from being dispensed, precluding unit costs associated with those grades and allowing unit costs of allowed grades. [See col. 5 lines 3-6]. While this may not be the most direct connection between the data and the unit price, we note that this is well within the very broad ambit of "using said data." Clearly the data is used to restrict the scope of available fuels and the selection among those remaining results in a unit price, so the data is indeed "used" in the determination of unit price, i.e. it is used in the flow of logic that any automated procedure arriving at a unit price would follow. As to the argument regarding specific vehicle category, we find this to be unpersuasive for the same reasons we stated above. Therefore, we find the appellant's arguments to be unpersuasive.

Accordingly we sustain the examiner's rejection of claims 22 and 28 through 33 rejected under 35 U.S.C. § 102(b) as anticipated by Walkey.

Claims 22 and 33 through 35 rejected under 35 U.S.C. § 102(e) as anticipated by Marion.

We note that the appellant argues these claims as a group. Accordingly, we select claim 22 as representative of the group. Marion describes the use of a vehicle transponder to transmit data regarding fuel and other purchases and to qualify a purchase for discount.

The appellant argues that the claim limitation "vehicle specific data" means data that identifies what particular category the particular vehicle is in. The appellant argues that this definition precludes a measurement of gas tank ullage from being an embodiment, and that the per unit cost associated with ullage is an estimate. [See Brief at p. 14-16]. We note that ullage refers to the volume of the tank which can receive additional fuel. [See Marion Para. 230]. The appellant again argues that Marion does not refer to a specific vehicle type.

The examiner responds that as to the use of ullage data, Marion is essentially another means for providing data regarding the selection of fuel types as argued above in the rejection over Walkey. We note that the transponder in Marion does transmit data to the fuel pump that results in fuel grade selection as in Walkey. [See Marion Para. 238].

Of greater persuasive authority is the description of a unit price discount. [See Para. 108-113]. We note that the use of data to provide a unit price discount is inherently a use that data to determine a per unit price of what is sold, including fuel. As to the argument regarding specific vehicle category, we find this to be unpersuasive for the same reasons we stated above. Therefore, we find the appellant's arguments to be unpersuasive.

Accordingly we sustain the examiner's rejection of claims 22 and 33 through 35 rejected under 35 U.S.C. § 102(e) as anticipated by Marion.

Claim 23 rejected under 35 U.S.C. § 103 as obvious over Minnesota.

The appellant has stated that the claim in this rejection stands or falls with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claim 23 rejected under 35 U.S.C. § 103 as obvious over Minnesota.

Claim 3 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Transportation Issues.

Issues.

The appellant has stated that the claim in this rejection stands or falls with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claim 3 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Transportation Issues.

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Claims 4 through 7 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Task Force.

The appellant has stated that the claims in this rejection stand or fall with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claims 4 through 7 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Task Force.

Claims 8 through 10 and 19 through 21 rejected under 35 U.S.C. § 103 as obvious over Minnesota.

The appellant has stated that the claims in this rejection stand or fall with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claims 8 through 10 and 19 through 21 rejected under 35 U.S.C. § 103 as obvious over Minnesota.

Claims 11, 12, 14 and 18 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Marion.

The appellant has stated that the claims in this rejection stand or fall with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claims 11, 12, 14 and 18 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Marion.

Claim 2 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Plotkin.

The appellant has stated that the claim in this rejection stands or falls with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claim 2 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Plotkin.

Claims 24-27 rejected under 35 U.S.C. § 103 as obvious over Walkey in view of Pollock.

The appellant has stated that the claims in this rejection stand or fall with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claims 24-27 rejected under 35 U.S.C. § 103 as obvious over Walkey in view of Pollock.

Claim 17 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Walkey.

The appellant has stated that the claim in this rejection stands or falls with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claim 17 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Walkey.

Claim 15 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Walkey and further in view of Pollock.

The appellant has stated that the claim in this rejection stands or falls with the independent claims rejected under novelty above, and accordingly we sustain the examiner's rejection of claim 15 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Walkey and further in view of Pollock.

CONCLUSION

To summarize,

- The rejection of claims 1, 22 and 36 rejected under 35 U.S.C. § 102(b) as anticipated by Minnesota is sustained.
- The rejection of claims 22 and 28 through 33 rejected under 35 U.S.C. § 102(b) as anticipated by Walkey is sustained.
- The rejection of claims 22 and 33 through 35 rejected under 35 U.S.C. § 102(e) as anticipated by Marion is sustained.
- The rejection of claim 23 rejected under 35 U.S.C. § 103 as obvious over Minnesota is sustained.

- The rejection of claim 3 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Transportation Issues is sustained.
- The rejection of claims 4 through 7 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Task Force is sustained.
- The rejection of claims 8 through 10 and 19 through 21 rejected under 35 U.S.C. § 103 as obvious over Minnesota is sustained.
- The rejection of claims 11, 12, 14 and 18 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Marion is sustained.
- The rejection of claim 2 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Plotkin is sustained.
- The rejection of claims 24-27 rejected under 35 U.S.C. § 103 as obvious over Walkey in view of Pollock is sustained.
- The rejection of claim 17 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Walkey is sustained.
- The rejection of claim 15 rejected under 35 U.S.C. § 103 as obvious over Minnesota in view of Walkey and further in view of Pollock is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

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AFFIRMED

Stuart S. Levy
STUART S. LEVY
Administrative Patent Judge

Robert E. Nappi
ROBERT E. NAPPI
Administrative Patent Judge

Anton W. Fetting
ANTON W. FETTING
Administrative Patent Judge

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